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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,390	07/24/2003	Forrest L. Pierson JR.	RIC99022C1	3931
25537	7590	05/30/2006	EXAMINER	
NGUYEN, HANH N				
ART UNIT		PAPER NUMBER		
		2616		
DATE MAILED: 05/30/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/627,390	PIERSON, FORREST L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hanh Nguyen	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on Application filed on 7/24/03.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/24/03.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 2, 11, 17 and 23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 13 and 25 of U.S. Patent No. 6,621,833 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 2, 11, 17 and 23 of the instant application merely broaden the scope of claims 1, 13 and 25 of the patent by eliminating the steps of unsuppressing the suppressed byte when the flag indicates suppression has occurred; and each node in the network recognizes the flag representing a silent byte. It is believed in the art that unsuppressing a suppressed byte in a packet at a destination is well-known when a flag in the packet indicates that there is the suppressed byte. Therefore, it would have been obvious to one skilled in the art to unsuppressing

a suppressed byte associated with a channel at a destination in order to determine missing bytes from the channel or whether the channel is suppressed.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2-6, 8-14, 16-24 are rejected under 35 USC 102(e) as being anticipated by Gummalla et al. ( Us pat. 6,993,007 B2).

In claims 2, 11, 17 and 23, Gummalla et al. discloses a method for removing channels from a data transmission ( see fig.1, col.4, lines 26-32; suppress silence voice traffic transmitten via asynchronous communication medium), comprising receiving a plurality of bytes of data associated with a plurality of channels ( see fig.1, col.3, lines 60-64; cable modem 104 receives voice packet from a user that needs to be transferred via a cable network. Each voice packet has a voice channel ID 306( col.6, lines 1-10); identifying at least one unused byte in the plurality of bytes ( see figure 5, step 502; codec 117 ( fig.1) detects the call has been silent; see col.7, lines 50-54); and generating a data packet comprising at least a portion of the plurality of bytes, the data packet including a flag indicating that the at least one unused byte has been suppressed (fig.5, step 504, a voice packet 310 ( fig.3) comprising one or more bytes of data and a silent

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flag bit 304 is transmitted to a CMTS 502 ( fig.1); see col.7, lines 55-60 and col.6, lines 1-10).

The silence flag 304 is set to indicate that a silence period starts ( see col.6, lines 1-10).

In claims 3, 13 and 19, Gummalla et al. discloses transmitting the data packet to a destination node over a commtmications network, wherein the destination node identifies the at least one unused byte based on the flag ( see fig.5, step 506, col.7, lines 60-65; CMTS 102 stops granting the service request after receiving a voice packet with the silence flag set).

In claims 4, 6, 8, 10, 12, 14, 16, 21 and 24, Gummalla et al. discloses forwarding the data packet to a plurality of intermediate nodes prior to the destination node, wherein the flag is included in the data packet forwarded to each of the plurality of intermediate nodes ( see fig.1, voice traffic is transmitted via Asynchronous communication medium comprising cable network, Internet network, wireless network and fiber optic network which inherently comprise intermediate nodes in the networks. See col.3, lines 25-40).

In claim 9, Gummalla et al. discloses the flag comprises one bit for each identified unused byte ( see fig.3, silence flag 304 comprises a silence bit which indicates a silence period of voice channel; see col.6, lines 1-10).

In claims 5 and 18, the limitations of these claims have been addressed in claim 1.

In claim 22, Gummalla et al. discloses separating the plurality of bytes into channels ( seee fig.3, each packet voice 310 comprises a voice channel identifierr 306 and a corresponding silence flag 304), wherein the flag identifies unused channels ( the silence flag 304 indicate a silent period of voice traffic). See col.6, lines 1-10.

In claim 20, Gummalla et al. discloses, in fig.1, the communications network ( cable network) includes a destination node ( CMTS 102), the method further agreeing to a unique

identification for the flag during initiation of a communication channel (the present invention implements a timer to determine the number of unused voice calls; see col.8, lines 37-45) between the first node (cable modem 104) and the destination node (CMTS 102).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 15 are rejected under 35 USC 103 as being unpatentable over Gummalla et al. (US pat. 6,993,007 B2).

In claims 7 and 15, Gummalla et al. does not disclose the data packet comprises frame relay packets. Since the voice packey is transmitted via asynchronous communication mediums comprising Internet and optical network, therefore; it would have been obvious to one skilled in the art to transmit frame relay packets via asynchronous communication medium of Gummalla et al.. Frame relay packets can be transmitted at high speed which is appropriate for asynchronous networks such as optical network, cable network.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Suzuki et al. (US pat. 4,897,832);

Pierson, Jr (US pat. 6,621,833 B1);

Abbas et al. (US Pat. 6,577,594 B1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh Nguyen whose telephone number is 571 272 3092. The examiner can normally be reached on Monday-Friday from 8:30 to 4:30. The examiner can also be reached on alternate

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 571 272 7488. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hanh Nguyen



HANH NGUYEN  
PRIMARY EXAMINER